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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

ROLF BETKA,

Plaintiff-Appellant,

v.

STATE OF OREGON, RICHARD B. SPOONER,
HOWARD CLYMAN, DOUGLAS S. ROBERTSON,
GARY R. OLSEN, BOARD OF EDUCATION OF
WEST LINN HIGH SCHOOL DISTRICT NO. 3J,
LARRY G. HIBBARD,

Defendants-Appellees.

No. 82-5754

On appeal from the United States Court of Appeals

for the Ninth Circuit

MOTION TO DISMISS OR AFFIRM

Appellee Douglas S. Robertson moves the Court to dismiss the appeal herein or, in the alternative, to affirm the Order of the United States Court of Appeals for the Ninth Circuit on the ground it is manifest that plaintiff did not state a claim for relief, the Court of Appeals acted properly in dismissing his appeal, and plaintiff has not properly invoked the jurisdiction of this Court.

The insubstantiality of plaintiff's appeal is succinctly and clearly shown by examination of the major pleadings and orders contained in the record.

In summary, on or about January 22, 1981, plaintiff filed his complaint, attempting to allege a variety of confusing claims for violation of his civil rights. After responses by defendants, and filing of additional documents by plaintiff,

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1 Magistrate Juba, on June 3, 1981, entered an 8-page "Findings
2 and Recommendation," recommending one defendant be granted summary
3 judgment and that plaintiff's action be dismissed as to the
4 other defendants. Magistrate Juba's recommendation, as he
5 discussed, was based upon a number of critical jurisdictional
6 defects in plaintiff's claims.

7 Subsequently, in addition to filing a number of
8 other documents, including an attempt to have his case design-
9 nated as a "complex case," plaintiff filed "Objections to
10 Findings and Recommendations." That June 24, 1981, document
11 cannot be fairly summarized, beyond the fact it is a jumble
12 of allegations regarding conspiracy and numerous violations of
13 plaintiff's rights. In spite of plaintiff's objections, on
14 July 30, 1981, United States District Judge Helen J. Frye entered
15 an Order consistent with Magistrate Juba's recommendations.

16 Plaintiff filed numerous documents requesting re-
17 consideration and rehearing, which were denied. He finally
18 filed a notice of appeal to the Ninth Circuit Court of Appeals
19 on October 27, 1981.

20 Pursuant to a January 4, 1982, Order by Judge Frye,
21 plaintiff was directed to file cost bonds, on the ground his
22 appeal was deemed frivolous and not in good faith. Plaintiff
23 filed a flurry of documents in both the District and Appellate
24 Courts, seeking, among other things, rehearing, consolidation
25 with one of his other lawsuits, and disqualification of Judge
26 Frye. Meanwhile, a number of the defendants moved to dismiss

1 plaintiff's appeal. On February 16, 1982, the Ninth Circuit
2 Court of Appeals issued an Order directing the parties to
3 submit statements discussing the Appellate Court's jurisdiction
4 over the appeal. Following submission of those statements,
5 the Court of Appeals ordered dismissal of plaintiff's appeal,
6 both on the ground it had not been timely filed, and on the
7 ground plaintiff had failed to file the necessary cost bonds.

8 In conclusion, the record clearly shows:

- 9 1. Plaintiff failed to state a claim for relief
10 in the District Court;
11 2. His appeal was properly dismissed by the
12 Ninth Circuit Court of Appeals;
13 3. Plaintiff has not stated a proper basis for
14 this Court's jurisdiction; and
15 4. This entire proceeding is frivolous.

16 Therefore, this Court should dismiss plaintiff's
17 appeal, or affirm the Ninth Circuit Court of Appeals' Order
18 which dismissed it at that level.

19 Respectfully submitted,

20 WOLF, GRIFFITH, BITTNER, ABBOTT
21 & ROBERTS

22 By: Emil R. Berg
23 Emil R. Berg
24 Of Attorneys for Defendant
25 Douglas S. Robertson
26

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing Motion
to Dismiss or Affirm on the following:

Mr. Rolf Betka
19886 South White Cloud Circle
West Linn, Oregon 97068

plaintiff,

Mr. William F. Gary
Solicitor General
Department of Justice
100 State Office Building
Salem, Oregon 97310

attorney for Defendants State of Oregon and Richard B. Spooner;

Messrs. Frank A. Moscato
and R. Erick Johnson
1000 Willamette Center
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attorneys for Defendant Clyman;

Messrs. Ronald E. Bailey
and S. Joel Wilson
1000 Willamette Center
Portland, Oregon 97204

attorneys for Defendant Olsen; and

Ms. Nancy S. Tauman
710 Center Street
Oregon City, Oregon 97045

attorney for Defendants West Linn High School District No.
3J and Larry G. Hibbard; on December 10, 1982, by mailing
to each individual a true copy thereof, certified by me as
such, contained in a sealed envelope, with postage paid,

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1 addressed to said individuals at their last known addresses,
2 as stated above, and deposited in the post office at Portland,
3 Oregon on said day.

4 DATED this 10th day of December, 1982.

5 WOLF, GRIFFITH, BITTNER, ABBOTT
6 & ROBERTS

7
8 By: Emil R. Berg
9 Emil R. Berg
10 Of Attorneys for Defendant
11 Douglas S. Robertson
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